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Sunday, January 14, 2001

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

MARIA IRENE DOMINGUEZ,

No. 00-10916

[Debtor](#)  (s).

_____ /

SHARON L. RODEN,

[Plaintiff](#)  (s),

v.

A.P. No. 00-1119

MARIA IRENE DOMINGUEZ,

[Defendant](#)  (s).

_____ /

Memorandum of Decision

In 1989, plaintiff Sharon Roden filed a complaint against debtor and defendant Maria

Dominguez in state court to recover an unpaid loan. The complaint contained six counts, including one alleging conversion and one alleging deceit. In 1990, the parties entered into a stipulated judgment in settlement of the litigation. Because Roden was concerned that Dominguez might file a [bankruptcy petition](#), she insisted that the stipulated judgment recite that it was "on all counts." Ten years later, Dominguez did file a [Chapter 7](#) petition. Roden filed this [adversary proceeding](#) seeking a determination that her [claim](#) is nondischargeable. She has moved the court for summary judgment, alleging that Dominguez is collaterally estopped from defending the action because of the 1990 stipulated judgment.

The court doubts that principles of collateral estoppel justify Roden's motion. One of the necessary elements for application of the doctrine is that the prior determination was *necessary* to the prior judgment. The stipulated judgment was for a sum certain only, plus interest. It could have been based only on the simple contract claims. Just because the judgment stated that it was on "all counts" did not make a finding of deceit or conversion necessary to the judgment. There were no punitive damages or other relief which could be based only on the deceit or conversion claims. Since a finding of deceit or conversion was not necessary to support the judgment, Dominguez is not precluded from refuting them now.

However, state collateral estoppel is not at all relevant to this matter. Section 727(a)(10) of the [Bankruptcy Code](#) makes any agreement purporting to waive a [discharge](#) unenforceable if entered into before bankruptcy. The fact that the agreement is made pursuant to a stipulated judgment does not alter this rule. *In re Cole*, 226 B.R. 647 (9th Cir.BAP 1998). Roden seems to argue that since her stipulated judgment did not expressly refer to a bankruptcy discharge, it is governed strictly by state collateral estoppel law and is not subject to § 727(a)(10). The court finds no merit to this position. As a court of equity, this court is concerned with the substance of a transaction, not its form. *Pepper v. Litton*, 308 U.S. 295, 305 (1939). Roden may not avoid the effect of § 727(a)(10) by clever wording and a reliance on state collateral estoppel law when the effect is exactly the same as if she had expressly contracted for a pre-bankruptcy waiver of discharge. For the foregoing reasons, Roden's motion for summary judgment will be denied. Counsel for Dominguez shall submit an appropriate form of order.

Dated: January 14, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

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